



KKO-DM

DEC 28 92

Opinion Court

JEFFREY D. HERRINGTON  
CRIMINAL DISTRICT ATTORNEY

ANDERSON COUNTY  
ANDERSON COUNTY COURTHOUSE  
500 North Church Street  
Palestine, Texas 75801  
903/723-7400

December 16, 1992

**RQ-478**

MBJ  
file # MC-18326-92  
ID # 18326

Honorable Dan Morales  
Attorney General State of Texas  
Supreme Court Building  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Request for Attorney General's Opinion

Dear Dan:

The District Clerk for Anderson County has asked that we make a request for an Attorney General's Opinion with regard to the following question:

What is the responsibility of the District Clerk when a child support obligee files a limited power of attorney authorizing a corporation the right to receive child support paid through the District Clerk's office, along with a request that those child support payments be sent to that corporation?

Factual Summary

In 1990, Mr. and Mrs. M. were divorced in Anderson County. Mrs. M. was named the managing conservator of Baby M. The Final Decree of Divorce provided that Mr. M. shall pay to Mrs. M. child support in the amount of \$150.00 a month. The Final Decree further provides that all child support payments be made through the office of the District Clerk, who shall remit those payments to Mrs. M., for the support of Baby M.

In 1992, the District Clerk received two instruments from the child support obligee, Mrs. M. (Copies attached). The first instrument is entitled "Limited Power of Attorney and Authorization to Release Information" and appears to make Child Support Collections dba In the Interest of Children Inc. the agent of Mrs. M., with the authority to collect and receive the child support payments due Mrs. M. The second instrument is a request that all future child support payments made through the District Clerk's Office be sent to Child Support Collections. Both are notarized.

It seems safe to assume that there exists a contract between Mrs. M. and Child Support Collections assigning a portion of the child support to Child Support Collections.

#### Legal Summary

A. Does Mrs. M. have the right to assign the right to collect and/or assign a portion of the child support to Child Support Collections?

Generally, the law favors assignments, including assignments of contracts to pay money, debts, and future interest. See, generally 7 Tex.Jur. 3rd Assignments sec. 1-12 (1990). The Family Code contains provisions that seem to support the managing conservators authority to make such an assignment. The managing conservator has "the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child" and "the power to.....make other decisions of substantial legal significance concerning the child". Tex. Fam. Code Ann. Sec. 14.02(a), 12.04(7)(8) (Vernon 1993). Further, there appears to be nothing in the Family Code expressly forbidding such an assignment, nor does there appear to be caselaw addressing the subject.

There is caselaw, however, that addresses agreements involving child support under public policy concerns. See e.g., Hill v. Hill, 819 S.W.2d 570 (Tex.App.-Pallas 1991, writ denied), De Los Santos v. De Los Santos, 794 S.W.2d 528 (Tex.App.-Corpus Christi 1990, no writ), Galaznik v. Galaznik, 685 S.W.2d 379 (Tex.App.- San Antonio 1987, no writ). These cases involved agreements between the parents prohibiting the managing conservator from seeking increased child support in exchange for some other consideration. These type agreements have been uniformly held unenforceable as against public policy, in that with regard to child support issues the welfare of the children is always the primary concern and not subject to be contracted away. Hill supra at 571-573, De Los Santos supra at 529-530, Galaznik supra at 383. Whether or not this public policy concern is applicable where a parent assigns her child support to another has not been resolved.

B. Even if Mrs. M. does have the right to assign the child support to Child Support Collection, is this a modification of the Divorce Decree requiring Court approval?

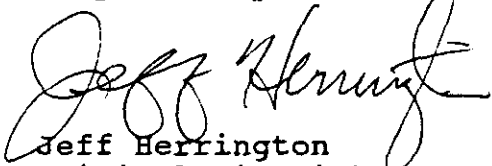
Section 14.08 of the Family Code provides that the portion of the decree that provides for child support may be modified only by court order. Tex. Fam. Code Ann. Section 14.08 (Vernon 1993), See also, De Los Santos, supra at 529, White v. Adrock, 666 S.W.2d 222 (Tex.App.-Houston [14th District] 1984, no writ).

The Court order in the present case provides that child support is to be submitted by the District Clerk to Mrs. M.. Section 14.05(a) of the Family Code provides that the court may order child support "in the manner and to the persons specified in the court decree."

And in fact, the issue on appeal in White, supra, was the trial court's authority to modify the divorce decree by changing the person to whom support payments were made. White supra at 225. In the present case, the documents filed by Mrs. M. appear to be an attempt to modify the decree by mailing and assigning the child support payments to Child Support Services.

I would very much appreciate your response in this matter. If you have any questions, feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jeff Herrington".

Jeff Herrington  
Criminal District Attorney  
Anderson County, Texas  
Texas Bar Card #09538500  
Anderson County Courthouse  
Palestine, Texas 75801  
(903) 723-7400

STATE OF  
COUNTY OF

*Texas*  
*Harris*

CAUSE NO.

*35321*

LIMITED POWER OF ATTORNEY AND AUTHORIZATION  
TO RELEASE INFORMATION

IN THE MATTER OF

MAYKOPET  
VS.

MAYKOPET

I, ANDREA HELMS, WHO RESIDE AT 19523 LAZY VALLEY  
KATY, TX, CITY OF KATY, COUNTY OF HARRIS  
STATE OF TEXAS, hereby appoint and authorize LIMITED POWER OF  
ATTORNEY to CHILD SUPPORT COLLECTIONS dba IN THE INTEREST OF  
CHILDREN, INC. and it's Corporation Officers as located at 5900 Memorial Drive, Suite  
200 Houston, Texas 77007 to take any and all lawful actions necessary to collect the child  
support due under the court order specified above, including the power to demand, sue for,  
collect, recover, receive, and negotiate all monies which CHILD SUPPORT  
COLLECTIONS collects on behalf of my child/ren. I further authorize CHILD SUPPORT  
COLLECTIONS to investigate and to obtain any and all information, documents, records,  
or other recordations necessary to determine the amount of child support and/or arrearage  
due under the above specified court order or any modification thereof.

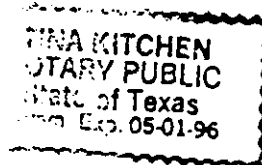
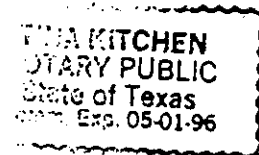
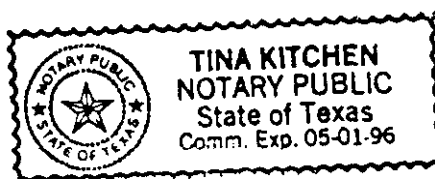
Andrea Helms  
SIGNATURE

James Franklin  
WITNESS

Lori Plate  
WITNESS

SUBSCRIBED AND SWORN TO before me on  
this 24th day of July

19 95  
BY: Tina Kitchen  
Notary Public, State of Texas



DIVISION OF CHILD SUPPORT ENFORCEMENT  
CUSTOMER SERVICE UNIT ATT:

Re: Change of Payee Address and Request for Payment History

DCSE Number: 466 33 5270

CAUSE Number: 35321

Dear Sirs:

Please,

1. Change my payee mailing address and forward all payments to:

c/o Child Support Collections  
5900 Memorial Drive, Suite 200  
Houston, Texas 77007

and,

2. Forward a current copy of all payments made through your agency to the above address.

Thank you!

ANDREA HELMS  
NAME (please print)

Andrea Helms  
Signature

466-33-5270  
Social Security Number

07-24-92  
Date

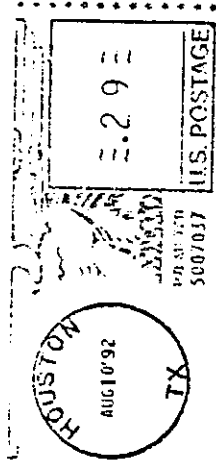
Sworn and subscribed before me this 24th day of July, 19 92

Tina Kitchen  
Notary Public, State of Texas

My Commission expires 5-1-96



CHILD SUICIDE COLLECTIONS  
5900 Memorial Drive, Suite 200  
Houston, Texas 77007



DISTRICT COURT  
P.O. BOX 1159  
PALESTINE, TEXAS 75802

ATT: MARY HOGAN

KIDS NEED LOVE AND CHILD SUPPORT!

